

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Saldana

February 18, 2005

An act to amend Section 11430.30 of the Government Code, and to amend Sections 30319, 30320, 30322, and 30326 of, and to repeal Sections 30323, 30324, 30327, and 30329 of, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Saldana. Coastal resources: ~~legislative intent~~
California Coastal Commission: ex parte communications.:

(1) Existing law provides that a communication otherwise prohibited by a specified provision governing ex parte communication in an administrative adjudication proceeding from an employee or representative of an agency that is a party to the presiding officer is permissible in certain circumstances. One of those circumstances is where the communication is for the purpose of advising the presiding officer concerning specified matters in an adjudicative proceeding that is nonprosecutorial in character, and the advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

This bill would also allow an ex parte communication under those circumstances where the advice involves an issue in a proceeding of the California Coastal Commission.

(2) The existing California Coastal Act of 1976 requires a person who applies to the California Coastal Commission for approval of a

development permit to provide the commission with the names and addresses of all persons who, for compensation, will be communicating with commission staff on the applicant's behalf or on behalf of the applicant's business partners, and requires that a disclosure be provided to the commission prior to the communication.

This bill would require a person who applies to the commission for approval of a development permit to provide that information, to the extent those communications are allowed under specified provisions governing ex parte communications in an administrative adjudication proceeding, and would additionally require the disclosure be placed in the public record prior an official commission proceeding on the action.

(3) The act provides that for purposes of the act, except as provided, an "ex parte communication" is any oral or written communication between a member of the commission and an interested person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

This bill would revise that definition to provide that an "ex parte communication" is any oral or written communication, either direct or indirect, between a member of the commission and any person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official and publicly noticed proceeding, or on the official record of the proceeding on the matter. The bill would also revise provisions describing the types of communications that are not ex parte communications, as specified. The bill would subject a commission member who violates those provisions governing ex parte communications to a civil fine, not to exceed \$7,500.

The bill would eliminate provisions defining the term "interested person" for purposes of the act, and provisions governing the disclosure and reporting of ex parte communications.

(4) The act authorizes any person, including a commission member, to request the commission staff to conduct a workshop on any matter before the commission or on any subject that could be useful to the commission, and requires that, when the executive director of the commission determines that a request is appropriate and feasible, a workshop be scheduled at an appropriate time and location.

This bill would require that such a workshop be publicly noticed for an appropriate time and location.

(5) *The act prohibits a commission member or alternate from making, participating in making, or in any other way attempting to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported, and imposes a civil penalty not to exceed \$7500 on a commission member who knowingly violates that prohibition.*

This bill would eliminate that provision.

~~The existing California Coastal Act of 1976 requires the California Coastal Commission to implement and administer various coastal protection programs in the state.~~

~~This bill would declare the intent of the Legislature to enact legislation that would require the commission to conduct, in a public hearing, workshop, or other official, publicly-noticed proceeding, any formal discussions concerning any pending or impending litigation, including, but not limited to, any enforcement actions involving a cease and desist order or a restoration order, or litigation to which the commission is a party. Alternatively, if these discussions are held in closed session, it is the intent of the Legislature that notice of those discussions should be included as part of a publicly-noticed proceeding.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 ~~legislation that would require the California Coastal Commission~~
3 ~~to conduct, in a public hearing, workshop, or other official,~~
4 ~~publicly-noticed proceeding, any formal discussions concerning~~
5 ~~(1) any pending or impending litigation, including, but not~~
6 ~~limited to, any enforcement action involving a cease and desist~~
7 ~~order or a restoration order, and (2) litigation to which the~~
8 ~~commission is a party. Alternatively, if these discussions are held~~
9 ~~in closed session, it is the intent of the Legislature that notice of~~
10 ~~these discussions should be included as part of a publicly noticed~~
11 ~~proceeding.~~

12 ~~SECTION 1. Section 11430.30 of the Government Code is~~
13 ~~amended to read:~~

1 11430.30. A communication otherwise prohibited by Section
2 11430.10 from an employee or representative of an agency that is
3 a party to the presiding officer is permissible in any of the
4 following circumstances:

5 (a) The communication is for the purpose of assistance and
6 advice to the presiding officer from a person who has not served
7 as investigator, prosecutor, or advocate in the proceeding or its
8 preadjudicative stage. An assistant or advisor may evaluate the
9 evidence in the record but shall not furnish, augment, diminish,
10 or modify the evidence in the record.

11 (b) The communication is for the purpose of advising the
12 presiding officer concerning a settlement proposal advocated by
13 the advisor.

14 (c) The communication is for the purpose of advising the
15 presiding officer concerning any of the following matters in an
16 adjudicative proceeding that is nonprosecutorial in character:

17 (1) The advice involves a technical issue in the proceeding and
18 the advice is necessary for, and is not otherwise reasonably
19 available to, the presiding officer, provided the content of the
20 advice is disclosed on the record and all parties are given an
21 opportunity to address it in the manner provided in Section
22 11430.50.

23 (2) The advice involves an issue in a proceeding of the San
24 Francisco Bay Conservation and Development Commission, *the*
25 *California Coastal Commission*, California Tahoe Regional
26 Planning Agency, Delta Protection Commission, Water
27 Resources Control Board, or a regional water quality control
28 board.

29 *SEC. 2. Section 30319 of the Public Resources Code is*
30 *amended to read:*

31 30319. ~~Any~~ A person who applies to the commission for
32 approval of a development permit shall provide the commission
33 with the names and addresses of all persons who, for
34 compensation, will be communicating with ~~the commission or~~
35 ~~commission staff on the applicant's behalf or on behalf of the~~
36 ~~applicant's business partners, to the extent those communications~~
37 ~~are allowed under Article 7 (commencing withn Section~~
38 ~~11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the~~
39 ~~Government Code.~~ That disclosure shall be provided to the
40 commission prior to ~~any such~~ a communication, *and shall be*

placed in the public record prior to an official commission proceeding on the action. Failure to comply with that disclosure requirement is a misdemeanor and, upon conviction, the person shall be punished by a fine of five thousand dollars (\$5,000) or imprisonment in the county jail not exceeding six months, and, in addition, shall be subject to immediate denial of the permit.

SEC. 3. Section 30320 of the Public Resources Code is amended to read:

30320. (a) The people of California find and declare that the duties, ~~and responsibilities, and quasi-judicial actions~~ of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority. It is further found that, to be effective, California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures. Accordingly, this article is necessary to preserve the public's welfare and the integrity of, and to maintain the public's trust in, the commission and the implementation of this division.

(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which require that the public's business be conducted in public meetings, with limited exceptions for sensitive personnel matters and litigation in accordance with the law, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to present their views and opinions ~~to the commission~~ through written or oral communications on the official record either before or during the public hearing on any matter before the commission.

SEC. 4. Section 30322 of the Public Resources Code is amended to read:

30322. (a) For purposes of this article, except as provided in subdivision ~~(b)~~ (c), an "ex parte communication" is any oral or written communication, either direct or indirect, between a

1 member of the commission and ~~an interested~~ *any* person, about a
2 matter within the commission's jurisdiction, which does not
3 occur in a public hearing, workshop, or other official *and*
4 *publicly noticed* proceeding, or on the official record of the
5 proceeding on the matter.

6 (b) *An ex parte communication relating to a pending or*
7 *impending adjudicative proceeding shall be restricted as*
8 *provided in Article 7 (commencing withn Section 11430.10) of*
9 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government*
10 *Code.*

11 (c) The following communications are not ex parte
12 communications:

13 (1) Any communication between a staff member acting in his
14 or her official capacity and any commission member or ~~interested~~
15 *other* person.

16 (2) ~~Any communication limited entirely to procedural issues,~~
17 ~~including, but not limited to, the hearing schedule, location,~~
18 ~~format, or filing date.~~

19 ~~(3) Any communication which~~ *that* takes place on the record
20 during an official proceeding of a state, regional, or local agency
21 that involves a member of the commission who also serves as an
22 official of that agency.

23 ~~(4)~~
24 (3) Any communication between a member of the
25 commission, with regard to any action of another state agency or
26 of a regional or local agency of which the member is an official,
27 and any other official or employee of that agency, including any
28 person who is acting as an attorney for the agency, *unless that*
29 *agency is a party, as defined in Section 11405.60 of the*
30 *Government Code, to an action pending or impending before the*
31 *commission.*

32 ~~(5)~~
33 (4) Any communication between a nonvoting commission
34 member and a staff member of a state agency where both the
35 commission member and the staff member are acting in an
36 official capacity.

37 ~~(6) Any communication to a nonvoting commission member~~
38 ~~relating to an action pending before the commission, where the~~
39 ~~nonvoting commission member does not participate in that~~

1 ~~action, either through written or verbal communication, on or off~~
2 ~~the record, with other members of the commission.~~

3 *(5) Notwithstanding any other provision of law, a commission*
4 *member shall not engage in a communication with a person*
5 *regarding any matter in litigation to which the commission is a*
6 *party, except in a publicly noticed proceeding, or in a closed*
7 *session as permitted by law, or with the commission's attorneys.*

8 *(d) In addition to any other applicable penalty, including a*
9 *civil fine imposed pursuant to Section 30824, a commission*
10 *member who violates this section is subject to a civil fine, not to*
11 *exceed seven thousand five hundred dollars (\$7,500) for each*
12 *communication. Notwithstanding any other provision of law, the*
13 *court may award attorneys' fees and costs to the prevailing*
14 *party.*

15 *SEC. 5. Section 30323 of the Public Resources Code is*
16 *repealed.*

17 ~~30323. For purposes of this article, an "interested person" is~~
18 ~~any of the following:~~

19 ~~(a) Any applicant, an agent or an employee of the applicant, or~~
20 ~~a person receiving consideration for representing the applicant, or~~
21 ~~a participant in the proceeding on any matter before the~~
22 ~~commission.~~

23 ~~(b) Any person with a financial interest, as described in Article~~
24 ~~1 (commencing with Section 87100) of Chapter 7 of Title 9 of~~
25 ~~the Government Code, in a matter before the commission, or an~~
26 ~~agent or employee of the person with a financial interest, or a~~
27 ~~person receiving consideration for representing the person with a~~
28 ~~financial interest.~~

29 ~~(c) A representative acting on behalf of any civic,~~
30 ~~environmental, neighborhood, business, labor, trade, or similar~~
31 ~~organization who intends to influence the decision of a~~
32 ~~commission member on a matter before the commission.~~

33 *SEC. 6. Section 30324 of the Public Resources Code is*
34 *repealed.*

35 ~~30324. (a) No commission member, nor any interested~~
36 ~~person, shall conduct an ex parte communication unless the~~
37 ~~commission member fully discloses and makes public the ex~~
38 ~~parte communication by providing a full report of the~~
39 ~~communication to the executive director within seven days after~~
40 ~~the communication or, if the communication occurs within seven~~

1 days of the next commission hearing, to the commission on the
2 record of the proceeding at that hearing.

3 (b) (1) The commission shall adopt standard disclosure forms
4 for reporting ex parte communications which shall include, but
5 not be limited to, all of the following information:

6 (A) The date, time, and location of the communication.

7 (B) The identity of the person or persons initiating and the
8 person or persons receiving the communication.

9 (C) A complete description of the content of the
10 communication, including the complete text of any written
11 material that was a part of the communication.

12 (2) The executive director shall place in the public record any
13 report of an ex parte communication.

14 (e) Communications shall cease to be ex parte
15 communications when fully disclosed and placed in the
16 commission's official record.

17 *SEC. 7. Section 30326 of the Public Resources Code is*
18 *amended to read:*

19 30326. ~~Any~~ A person, including a commission member, may
20 request the commission staff to conduct a workshop on any
21 matter before the commission or on any subject that could be
22 useful to the commission. When the executive director
23 determines that a request is appropriate and feasible, a workshop
24 shall be scheduled at, *and publicly noticed for*, an appropriate
25 time and location.

26 *SEC. 8. Section 30327 of the Public Resources Code is*
27 *repealed.*

28 30327. (a) No commission member or alternate shall make,
29 participate in making, or any other way attempt to use his or her
30 official position to influence a commission decision about which
31 the member or alternate has knowingly had an ex parte
32 communication that has not been reported pursuant to Section
33 30324.

34 (b) In addition to any other applicable penalty, including a
35 civil fine imposed pursuant to Section 30824, a commission
36 member who knowingly violates this section shall be subject to a
37 civil fine, not to exceed seven thousand five hundred dollars
38 (\$7,500). Notwithstanding any law to the contrary, the court may
39 award attorneys' fees and costs to the prevailing party.

1 *SEC. 9. Section 30329 of the Public Resources Code is*
2 *repealed.*
3 ~~30329. Notwithstanding Section 11425.10 of the Government~~
4 ~~Code, the ex parte communications provisions of the~~
5 ~~Administrative Procedure Act (Article 7 (commencing with~~
6 ~~Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title~~
7 ~~2 of the Government Code) do not apply to proceedings of the~~
8 ~~California Coastal Commission under this division.~~

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